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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,154	02/11/2005	Johann Natterer	07-2216	1572
20306 7590 10/28/2008 MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP 300 S. WACKER DRIVE 32ND FLOOR CHICAGO, IL 60606				
EXAMINER DURAND, PAUL R				
ART UNIT		PAPER NUMBER		
3721				
MAIL DATE		DELIVERY MODE		
10/28/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/524,154

Applicant(s)

NATTERER, JOHANN

Examiner

PAUL R. DURAND

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-9 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 11 February 2005 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/CDC)
4) ☐ Interview Summary (PTO-413)
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stockley (US 6,408,598) in view of Rossi et al. (US 6,748,726).

In claim 1, Stockley discloses the invention as claimed including packaging a product 16, in a tray 12, located in a sealing chamber having upper and lower parts 40 and 50 respectively, which are movable relative to each other, an upper film 24, located a distance above a product 16, which is clamped along and edge which surrounds tray 12, and is thereafter stretched in a direction away from the product, where the tray is raised to the film by means 54 and the tray and film are heat sealed together (See figures 1-6 and col. 10, line 27 – col. 11, line 15).

What Stockley does not disclose is the clamping of the edges upper film by closing the chamber parts. However, Rossi teaches that it is old and well known in the art of vacuum sealing products to provide upper and lower chamber parts 3 and 2 respectively, where the top film 11, is clamped at its edges prior to being sealed to tray 4 for the purpose of preventing movement of the film prior to sealing (See figure 1 and col. 2, line 57 – col. 3, line 12).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Stockley with the clamping means as taught by Rossi for the purpose of preventing movement of the film prior to sealing.

In claims 2 and 3, the modified invention of Stockley, through Stockley discloses the invention as claimed including evacuating and backfilling the spaces surrounding the product prior to sealing (See Stockley, col. 10, line 27 – col. 11, line 15).

In claim 9, the modified invention of Stockley, through Stockley discloses the invention as claimed including upwardly stretching the film.

3. Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stockley in view of Sanfilippo et al (US 6,202,388) and in further view of Rossi.

In claims 4, Stockley discloses the invention as claimed including sealing station, comprised of sealing heads 49, an internal space between the upper and lower portions, which are movable relative to each other, tray 12 inserted into the space in the open position, an upper film 24, supplied above the interior space, drive mechanism 54, for moving the upper and lower portions relative to one another for the sealing element. What Stockley does not explicitly disclose is the specific film feeding device, the use of a controller to control the operation and the clamping of the edges upper film by closing the chamber parts (See figures 1-6 and col. 10, line 27 – col. 11, line 15).

However, Sanfilippo teaches that it is old and well known in the art of packaging to provide an upper film feed means 14 for feeding film 15, into a packaging machine 10, controlled by programmable controller 16, which controls the feed of the film, sealing

operation and gas flow for the purpose of synchronizing a packaging operation (See figure 1, and col. 6, line 56-67).

Additionally, Rossi teaches that it is old and well known in the art of vacuum sealing products to provide upper and lower chamber parts 3 and 2 respectively, where the top film 11, is clamped at it's edges prior to being sealed to tray 4 for the purpose of preventing movement of the film prior to sealing (See figure 1 and col. 2, line 57 – col. 3, line 12).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made at have provided the invention of Stockley with the feed and controller means as taught by Sanfilippo and the clamping means as taught by Rossi for the purpose of electrically synchronizing a packaging operation.

In claim 5, the modified invention of Stockley, through Stockley discloses the invention as claimed including evacuating and backfilling the spaces surrounding the product prior to sealing (See col. 10, lines 27 – col. 11, line 15).

In claims 6 and 8, the modified invention of Stockley, through Stockley discloses the invention as claimed including a carrying device 52 for accommodating tray 12 in the interior of the chamber, which is bi-directional from a lower open position, where the tray is spaced from the plane of the upper film and a second position where the tray is raised to a minimum position for the film when the station is closed (See figures 1-6 and col. 10, line 27 – col. 11, line 15).

In claim 7, the modified invention of Stockley, through Stockley discloses the invention as claimed including an upper forming area 42, with a recess facing the lower portion (See figure 2).

Response to Arguments

4. Applicant's arguments filed 4/14/2008 have been fully considered but they are not persuasive.

Applicant argues that the combination of Stockley and Rossi do not teach nor disclose a film which is clamped around an edge of the tray and is stretched. This argument is not persuasive. The process claims do not generally express a specific order of operation for the clamping, stretching of the film and subsequent vacuum packaging. The examiner asserts that the cited combination is proper and is supported by proper motivation as all of the elements of the claims have been disclose or taught.

It is suggested to applicant that an amendment to the claims should include claiming the process steps in sequence, so that the independent process claims the sequence of clamping, stretching and vacuum packaging. Moreover, apparatus claims must be distinguished in terms of structure rather than function.

The examiner is aware that two continuations have been filed for this application and that this action closes prosecution on the merits. In the interest of a fair prosecution of applicant's invention, the examiner is willing to conduct an after-final interview to determine how to best place the application in condition for allowance.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL R. DURAND whose telephone number is (571)272-4459. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PAUL R. DURAND/
Primary Examiner, Art Unit 3721
October 31, 2008